

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BERKLEE COLLEGE OF MUSIC, INC.,

Plaintiff,

v.

MUSIC INDUSTRY EDUCATORS, INC., and
JOHN TERRELL

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

For its Complaint, Plaintiff Berklee College of Music, Inc. alleges as follows:

The Parties

1. The Plaintiff Berklee College of Music, Inc. (“Berklee”) is a Massachusetts nonprofit corporation with a principal place of business at 1140 Boylston Street, Boston, MA 02215.

2. Upon information and belief, Defendant Music Industry Educators, Inc. (“MIE”) has a principal place of business at 40 NE 1st Ave., Ste. 604, Miami, FL 33132, and Defendant John Terrell is an individual having an address at 901 Brickell Key Drive, #1402, Miami, FL 33131. MIE and Mr. Terrell are hereinafter collectively referred to as the Defendants.

Jurisdiction and Venue

3. The Court has jurisdiction over Defendants where Defendants make a website available to Massachusetts residents, with the knowledge that such website has caused and continues to cause tortious injury within Massachusetts and throughout the country to Berklee.

4. The Court has exclusive subject matter jurisdiction over the copyright claims in this Complaint under 28 U.S.C. § 1331 and 1338(a) and 17 U.S.C. § 301(a). The Court has

exclusive subject matter jurisdiction over the federal unfair competition claims in this Complaint under 15 U.S.C. § 1121(a). The Court has subject matter jurisdiction over the other claims in this Complaint under 28 U.S.C. § 1367.

5. Venue is proper in this jurisdiction and district under 28 U.S.C. §§ 1391(c).

Factual Allegations

6. Berklee is one of the foremost education institutions for the study of music in the world. Berklee graduates have won over 150 Grammy Awards, and numerous Oscar and Emmy awards. Since its founding in 1945, it has been a consistent innovator in music education. Berklee was the first school to introduce an undergraduate degree program in film scoring and the first educational institution to offer college-level majors in music synthesis and songwriting.

7. Since 1997, Berklee has owned and maintained a website, at www.berklee.edu, that provides information to Berklee College of Music students and potential students.

8. In 2002, Berklee began operating an online program offering educational courses in the study of music under the name Berklee Music. Berklee has owned and maintained a website for Berklee Music located at www.berkleemusic.com since that time. The University Continuing Education Association (UCEA), a membership association of higher education institutions that promotes excellence in continuing higher education, recently awarded Berklee Music its fifth consecutive best online college course award.

9. Berklee has expended substantial time, intellectual effort and capital to create its www.berklee.edu and www.berkleemusic.com websites and the original, Berklee-authored content published thereon (the “Berklee Content”).

10. The Berklee Content constitutes original expression and copyrightable matter, the copyright in which is owned by Berklee.

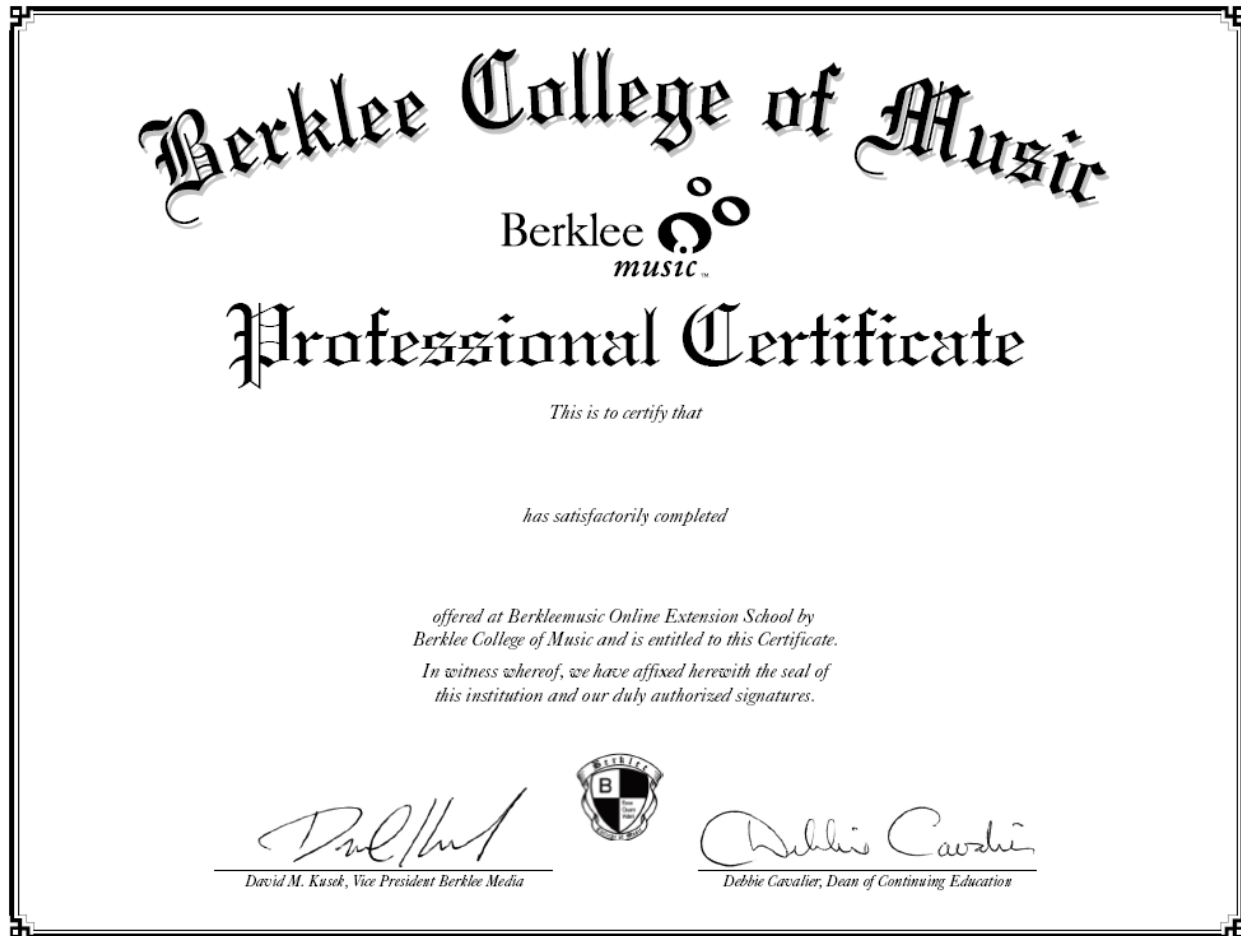
11. Berklee registered the copyright in and to the Berklee Content published on the www.berklee.edu website under U.S. Copyright Registration No. TX 6-854-570, which issued on July 29, 2008, and a copy of which is attached hereto as Exhibit A. Berklee has at no time relinquished ownership of its copyright in the Berklee Content published on the www.berklee.edu website.

12. Berklee registered the copyright in and to the Berklee Content published on its www.berkleemusic.com website under U.S. Copyright Registration No. TX 6-854-567, which issued on July 29, 2008, and a copy of which is attached hereto as Exhibit B. Berklee has at no time relinquished ownership of its copyright in the Berklee Content published on the www.berkleemusic.com website.

13. Berklee owns the distinctive service mark shown below (the “Shield Mark”):



14. Since at least as early as 1967, Berklee has continuously used its Shield Mark to identify its educational services. The Shield Mark is prominently featured on diplomas given the graduates of Berklee College of Music, certificates given to students who complete courses of study through Berklee Music, and on Berklee’s websites and promotional materials. An example of such use can be seen below:



15. By reason of Berklee's exclusive and continuous use and since long prior to any use of such mark by Defendants, the Shield Mark has become a service mark relied upon by the music education community and the public as identifying the services of Berklee and distinguishing those services from others. The Shield Mark is part of the goodwill and reputation of Berklee.

16. Berklee also owns the distinctive service marks shown below (the "Circle Marks"; the Circle Marks and the Shield Mark as referred to herein as the "Berklee Marks):



Master Certificates



Professional Certificates



Specialist Certificates

17. Since at least as early as 2004, Berklee has continuously used its Circle Marks in connection with its educational services provided through Berklee Music. The marks are prominently featured on berkleemusic.com. Examples of such uses can be seen below:



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September 28th

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For Certificate Students.

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Voted best online course.

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Share the online experience.



Guitar Certificate Program

Become a more well-rounded and articulate guitarist. Sharpen your theory, performance and recording skills, and build a firm foundation in form, control, feel, and harmonies.



Master Certificates

[Guitar](#)

(24 credits)

- Guitar Scales 101
- Guitar Chords 101
- Blues Guitar Workshop
- Classic Rock Guitar Workshop
- Jazz Guitar 101
- 3 Electives

[Production and Guitar](#)

(27 credits)

- Desktop Music Production
- Critical Listening 1
- Guitar Scales 101
- Guitar Chords 101
- Getting Your Guitar Sound
- Producing Music with Reason
- 3 Electives

[Songwriting and Guitar](#)

(27 credits)

- Getting Your Guitar Sound
- Guitar Chords 101
- Lyric Writing: Tools and Strategies
- Lyric Writing: Writing Lyrics to Music
- Songwriting Workshop: Melody
- Songwriting Workshop: Harmony
- 3 Electives



Professional Certificates

[Guitar](#)

(15 credits)

- Guitar Chords 101
- Guitar Scales 101
- Blues Guitar Workshop
- Classic Rock Guitar Workshop
- Basic Improvisation

[Rock, Rhythm, and Blues Guitar](#)

(15 credits)

- Getting Your Guitar Sound
- Guitar Chords 101
- Classic Rock Guitar Workshop
- Rhythm and Groove Guitar
- Funk/Rock and R&B Guitar Soling



Specialist Certificates

[Advanced Guitar](#)

(9 credits)

- Getting Your Guitar Sound
- Guitar Chords 101
- Jazz Guitar 101

[Blues, Rock, and Jazz Guitar](#)


(9 credits)


- Blues Guitar Workshop
- Classic Rock Guitar Workshop
- Jazz Guitar 101

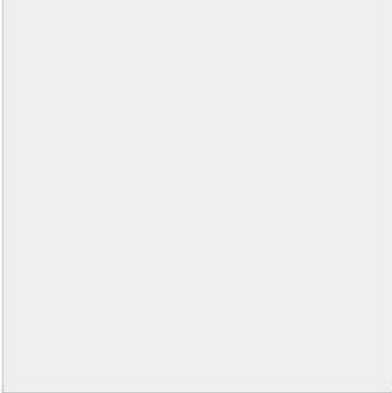
[Guitar Skills](#)


(9 credits)


- Guitar Chords 101


**Berkleemusic & Propellerhead Software**
Certificate Programs
The curriculum in this program is developed and certified by Berkleemusic and Propellerhead Software.

**Voice**
Certificate Programs
Expand your range and expression, and become more confident in vocal performances.




**Master Certificates**
(8-12 courses)

**Professional Certificates**
(5-6 courses)

**Specialist Certificates**
(3 courses)

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[Berkleemusic](#) is accredited by the New England Association of Schools and Colleges ([NEASC](#))



18. By reason of Berklee's exclusive and continuous use and since long prior to any use of such marks by Defendants, the Circle Marks have become service marks relied upon by the music education community and the public as identifying the services of Berklee and distinguishing those services from others. The Circle Marks are part of the goodwill and reputation of Berklee.

Defendants' Unlawful Conduct

19. Upon information and belief, Defendants provide online music education services.

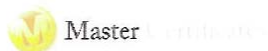
20. Upon information and belief, Defendants have partnered or attempted to partner with a number of music industry organizations and educational institutions to offer online music education services to their members and students. These organizations and institutions include, but may not be limited to, Arizona State University, California Polytechnic Institute, Augusta State University, Mississippi State University, Miami Dade College, ADG Productions, Anne Arundel Community College, Atlantic Cape Community College, Broward College, Broome Community College, California State University Fresno, Fairfield University, Florida International University, Houston Baptist University, Kishwaukee College, Mediatech Institute, National University, Pennsylvania Academy of Recording Arts and Sciences, Rock Valley College, SUNY Ulster, and Thomas Edison State College.

21. Upon information and belief, Defendants operate, or have operated, websites located at www.musicindustryeducators.com, www.mu-ed.com/asu, www.mu-ed.com/calpoly, www.mu-ed.com/augusta, www.mu-ed.com/msu, www.mu-ed.com/mdc, and www.mu-ed.com/adgproductions, www.mu-ed.com/aacc, www.mu-ed.com/accc, www.mu-ed.com/bcc, www.mu-ed.com/fairfield, www.mu-ed.com/fiu, www.mu-ed.com/hbu, www.mu-ed.com/KishC, www.mu-ed.com/mediatechinstitute, www.mu-ed.com/nu, www.mu-ed.com/rvc, www.mu-ed.com/sunyulster, and www.mu-ed.com/tesc (the "MIE Sites").

22. Upon information and belief www.musicindustryeducators.com has been in operation since at least as early as June 23, 2007.

23. All of the MIE Sites currently contain unauthorized Berklee Content.

24. Defendants have used, in association with their music education services, service marks that are knowingly identical, or confusingly similar to the Berklee Marks, as illustrated in the examples below:



MUSIC BUSINESS & MUSIC PRODUCTION MASTER CERTIFICATE

This certificate program includes the following courses:

Introduction to Music Industry
Foundations of Audio
Artist Representation
DAW Theory & Techniques

Pro Tools I
Music Industry Entrepreneurship
Marketing In the Music Industry
Legal Aspects of the Music Industry
Music Industry Seminar -Current Issues and Trends

Choose ONE elective course from the following list:

Concert Touring & Promotion
Music Publishing
Accounting in the Music Industry



25. Berklee has at no time authorized Defendants to use the Berklee Content or the Berklee Marks in any manner.

Terrell's Infringing Conduct

26. Upon information and belief, John Terrell is a Director, the President, and the registered agent of MIE, and is the principal equitable owner of MIE.

27. Upon information and belief, Defendant Terrell oversees the business operations of MIE.

28. Upon information and belief, Defendant John Terrell resides at 901 Brickell Key Drive, #1402, Miami, FL 33131.

29. Upon information and belief, MIE was originally incorporated under the name Music Industry Institute, Inc., on March 7, 2007. At that time, the address of Music Industry Institute, Inc. was listed as Defendant John Terrell's home address: 901 Brickell Key Drive, #1402, Miami, FL 33131.

30. Defendant John Terrell remained the sole officer of MIE until February 25, 2008.


COUNT ONE - Copyright Infringement

31. Berklee repeats and incorporates by reference the allegations of paragraphs 1 through 30, above.

32. Berklee owns the registered copyrights in and to the Berklee Content. Berklee has at no time relinquished ownership of its copyrights in the Berklee Content.

33. Defendants have reproduced on each of the MIE Sites portions of the Berklee Content. For instance, below is a screen shot of Berklee's Berklee Music website describing a course entitled "Producing Music with Digital Performer."

Fall Term Starts September 28th — [Sign Up](#) | [Log In](#)



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Producing Music with Digital Performer


Course Authors: [Benjamin Newhouse](#)

[Course Preview](#)

Producing with Digital Performer provides you with a complete look at this powerful audio/MIDI music production tool. You'll learn how to properly set up your studio, record and edit audio and MIDI, and how to effectively use the programs various effects. You'll familiarize yourself with Digital Performer's tools and functions, the techniques necessary to develop your dynamic and phrasing ideas, and the ways by which you can transform these ideas into complete musical projects ready for CD or MP3. This course includes multimedia instructions on how to use Digital Performer, including many Digital Performer projects, for you to analyze and explore. No matter what level of knowledge you have of sequencing or music technology, this course will provide you with everything you'll need to know about how to create music using Digital Performer.

By the end of this course, you will:

- Set up Digital Performer studio and setup files
- Understand MIDI recording and editing techniques and use MIDI editing windows
- Create, edit and mix your audio
- Analyze a song and deliver your final mastered project



See How It Works
Step Inside a Sample Online Course

Enroll

Questions?

Contact Advisor

Course Info ▾

-**For-credit tuition:** \$1,195

-**Non-credit tuition:** \$995

-**Credits:** 3


-**Duration:** 12 Weeks

-**Catalog #:** BMPR-170


▸ [Syllabus](#)

▸ [Requirements](#)

Course Faculty ▾




[Benjamin Newhouse](#)
Assistant professor at Berklee College of Music and a music supervisor and composer on dozens of television shows, films, and stage productions.



[Daniel Moretti](#)
Professor in the Contemporary Writing and Production department at Berklee College of Music.

Contact Advisor



Questions?
Contact us for personal advice choosing your curriculum.

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[Call an advisor using Skype](#)

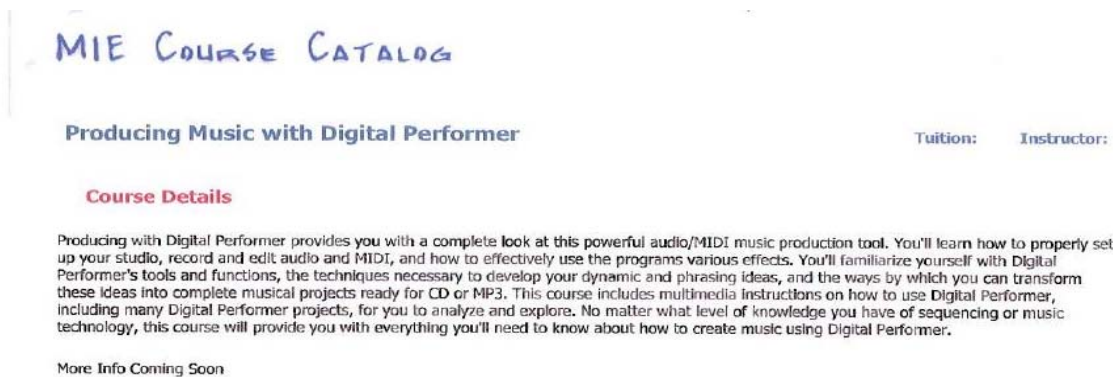
Berklee's course description for "Producing Music with Digital Performer" states:

Producing with Digital Performer provides you with a complete look at this powerful audio/MIDI music production tool. You'll learn how to properly set up your studio, record and edit audio and MIDI, and how to effectively use the programs various effects. You'll familiarize yourself with Digital Performer's tools and functions, the techniques necessary to develop your dynamic and phrasing ideas, and the ways by which you can transform these ideas into complete musical projects ready for CD or MP3. This course includes multimedia instructions on how to use Digital Performer, including many Digital Performer projects, for you to analyze and explore. No matter what level of knowledge you have of sequencing

or music technology, this course will provide you with everything you'll need to know about how to create music using Digital Performer.

34. Below is a screen shot of Defendants' website, www.musicindustryeducators.com, which describes the "course details" of a class called "Producing Music with Digital Performer" as follows:


Producing with Digital Performer provides you with a complete look at this powerful audio/MIDI music production tool. You'll learn how to properly set up your studio, record and edit audio and MIDI, and how to effectively use the programs various effects. You'll familiarize yourself with Digital Performer's tools and functions, the techniques necessary to develop your dynamic and phrasing ideas, and the ways by which you can transform these ideas into complete musical projects ready for CD or MP3. This course includes multimedia instructions on how to use Digital Performer, including many Digital Performer projects, for you to analyze and explore. No matter what level of knowledge you have of sequencing or music technology, this course will provide you with everything you'll need to know about how to create music using Digital Performer.



35. The description of Defendants' course is an identical copy of Berklee's description of its course.

36. Below is another screen shot of Berklee's Berklee Music website describing a course entitled "Music Business 101."

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 Contact us for personal advice choosing your curriculum.

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 +1 617 747 2146 (Intl)
[Chat live with an advisor](#)
[Call an advisor using Skype](#)

Music Business 101

Course Authors: [Lauren Davis](#)

The business of music is a global multi-billion dollar industry comprised of a relatively small amount of individuals creating the music, and a whole lot of people doing everything else: working at labels, distribution companies, publishing companies, recording studios, artist management, promotion, producing, and legal counsel. If you are looking to further your career in the business end of the music industry, you cannot be successful without first understanding the entire industry as a whole. Music Business 101 presents a broad overview of the recording and music industry, and explains how the various segments operate on a day-to-day basis: where monies are generated, who the key players are, how deals are made and broken, how to protect your interests, and new developments in digital technology that are changing the way that music is marketed, promoted, distributed, and heard. This course presents the career opportunities that are available within the industry, and the knowledge you'll need to achieve your goals.

By the end of this course, you will:

- Understand the structure of, and relationship between, the recording, music publishing, marketing and live performance industries.
- Learn about different career and income opportunities, and develop a strategy to break in and succeed in the music industry.
- Understand the business aspects involved in producing, manufacturing, marketing, and distributing records.

Enroll


Questions?


Contact Advisor

Course Info ▾

- For-credit tuition: \$1,095
- Non-credit tuition: \$895
- Credits: 3
- Duration: 12 weeks
- Catalog #: BMB-110
- [Syllabus](#)
- [Requirements](#)

Course Faculty ▾

 **Lauren Davis** In private practice since 1992, advising high-level recording music industry executives and artists.

 **John Kellogg** Assistant Chair of the Music Business/Management department at the Berklee College.

Student Comments ▾

"The information presented in the class really opened my eyes to what is going on in the music industry. The

The course is described as follows:

The business of music is a global multi-billion dollar industry comprised of a relatively small amount of individuals creating the music, and a whole lot of people doing everything else: working at labels, distribution companies, publishing companies, recording studios, artist management, promotion, producing, and legal counsel. If you are looking to further your career in the business end of the music industry, you cannot be successful without first understanding the entire industry as a whole

37. Below is another screen shot of Defendants' website,

www.musicindustryeducators.com, describing the "course details" of a class called "Introduction to Music Industry" as follows:

The business of music is a global multi-billion dollar industry comprised of a relatively small amount of individuals creating the music, and a whole lot of people doing everything else: working at labels, distribution companies, publishing companies, recording studios, artist management, promotion, producing, and legal counsel. If you are looking to further your career in the business end of the music industry, you cannot be successful without first understanding the entire industry as a whole.



The screenshot shows a webpage titled "MIE COURSE CATALOG". Below the title, the course "Introduction to Music Industry" is listed with a tuition of \$599.00 and an instructor, J. Martin Lett. A button labeled "DOWNLOAD Course Syllabus" is visible. Under the "Course Details" section, the same paragraph about the music industry is repeated. To the right of the text is a portrait of the instructor, J. Martin Lett.

MIE COURSE CATALOG

Introduction to Music Industry Tuition: \$599.00 Instructor: J. Martin Lett

DOWNLOAD Course Syllabus

Course Details

The business of music is a global multi-billion dollar industry comprised of a relatively small amount of individuals creating the music, and a whole lot of people doing everything else: working at labels, distribution companies, publishing companies, recording studios, artist management, promotion, producing, and legal counsel. If you are looking to further your career in the business end of the music industry, you cannot be successful without first understanding the entire industry as a whole.

By the end of this course, you will:

- Understand the structure of, and relationship between, the recording, music publishing, marketing and live performance industries.
- Learn about different career and income opportunities, and develop a strategy to break in and succeed in the music industry.
- Understand the business aspects involved in producing, manufacturing, marketing, and distributing records.

Instructor: J. Martin Lett

38. Again, the description of Defendants' course is an identical copy of the Berklee's description of its course.

39. Further examples of similar copying of Berklee's Berklee Music website by Defendants are attached hereto as Exhibit C.

40. These public actions by Defendants constitute copyright infringement of the Berklee Content pursuant to 17 U.S.C. §§ 106 and 501, et seq.

41. Defendants will continue to infringe the Berklee Content unless permanently enjoined by this Court.

42. Berklee has been and continues to be damaged by Defendants' acts of infringement, and is entitled to a permanent injunction and an award of its actual damages and any profits of Defendant under 17 U.S.C. §§ 502, 504(a)(1), and 504(b).

43. Upon information and belief, the infringing acts of Defendants were undertaken and/or continue with knowledge of Berklee's rights and without any good faith basis in law or fact that Defendants' actions were or are legal, thus Defendants' infringing acts were committed willfully and with reckless disregard of Berklee's known rights.

COUNT TWO – Federal Unfair Competition

44. Berklee repeats and incorporates by reference the allegations of paragraphs 1 through 43 above.

45. Berklee owns the Berklee Marks, which are inherently distinctive and valid under common law.

46. The acts of Defendants complained of herein are likely to cause source confusion, to cause mistake, or to deceive consumers as to the origin of Defendants' services, as to an affiliation, connection, or association of Defendants' services with Berklee and the Berklee Marks, and as to sponsorship or approval of Defendants' services by Berklee.

47. Defendants' unauthorized website use of reproductions, counterfeits, copies, and/or colorable imitations of the Berklee Marks constitutes use in interstate commerce.

48. Defendants' actions constitute unfair competition, false designation of origin, palming off, and false description or representation in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

49. Defendants' unlawful acts have caused Berklee irreparable harm and will continue to cause irreparable harm to Berklee unless enjoined.

50. Upon information and belief, Defendants have profited from their unlawful actions and have been unjustly enriched to the detriment of Berklee. Defendants' unlawful actions have caused Berklee monetary damage.

COUNT THREE – State Trademark Infringement

51. Berklee repeats and incorporates by reference the allegations of paragraphs 1 through 50, above.

52. Berklee owns the Berklee Marks, which are inherently distinctive and valid at common law.

53. The Berklee Marks achieved such distinctiveness before Defendants began their unlawful conduct complained of herein.

54. The actions of Defendants complained of herein are likely to cause injury to the business reputation of Berklee and likely to cause dilution of the Berklee Marks, subjecting Defendants to liability under Massachusetts General Laws Chapter 110B, § 12.

55. Defendants' actions complained of herein are likely to cause confusion, mistake and/or deception as to source, sponsorship, or affiliation, and are likely to cause injury to the business subjecting Defendants to liability under the common law of Massachusetts.

COUNT FOUR – Deceptive Trade Practices Under M.G.L. c. 15, § 93A

56. Berklee repeats and incorporates by reference the allegations of paragraphs 1 through 55, above.

57. Defendants' activities complained of herein constitute deceptive trade practices under M.G.L. c. 15, § 93A, Section 2.

58. Defendants' actions were made in willful or knowing violation of M.G.L. c. 15, § 93A, Section 2.

59. Defendants' actions have caused, and will continue to cause, irreparable harm to Berklee unless enjoined.

60. Upon information and belief, Defendants' have profited from their unlawful and deceptive practices and have been unjustly enriched to the detriment of Berklee. Defendants' unlawful actions have caused Berklee monetary damage.

Prayer for Relief

WHEREFORE, Berklee respectfully prays that this Court:

(1) Enter judgment in favor of Berklee and against Defendants on each of the counts in the Complaint;

(2) Find that Defendants acted recklessly and with willful disregard for the rights of Berklee;

(3) Preliminarily and permanently enjoin Defendants from reproducing, publishing, posting, copying, or otherwise distributing the Berklee Content, including all versions thereof;

(4) Preliminarily and permanently enjoin Defendants from using the Berklee Marks in association Defendants' educational services and all other goods and services related thereto;

(5) Award Berklee its damages, in addition to Defendants' profits as a result of Defendants' acts of copyright infringement;

(6) Award Berklee three times its damages, in addition to its reasonable attorneys' fees and Defendants' profits, as a result of Defendants' acts of trademark infringement;

(7) Order Defendants to deliver up and surrender to Berklee all copies of the Berklee Content and Berklee Marks and any other infringing materials for destruction;

(8) Award Berklee three times its actual damages resulting from Defendants' deceptive trade practices and its attorneys' fees;

(9) Award Berklee such other relief as the Court deems just and equitable, including attorneys' fees.

JURY DEMAND

Berklee demands trial by jury on all issues triable thereby.

Dated: September 28, 2009

/s/ Maria Raia Hamilton

Maria Raia Hamilton, BBO# 554798

John T. Williams, BBO# 528840

Paul S. Sennott, BBO# 670571

FISH & RICHARDSON P.C.

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F (617) 542-8906

Attorneys For Plaintiff, Berklee College of Music